

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

CITY OF BATAVIA, NEW YORK;
TOWN OF BATAVIA, NEW YORK;
NL INDUSTRIES, INC.; AGWAY, INC.;
BATAVIA METAL PRODUCTS CORPORATION;
BATAVIA NEWSPAPERS CORPORATION, d/b/a
BATAVIA DAILY NEWS; BYRON ENTERPRISES,
INC.; CHAPIN MANUFACTURING, INC.;
EATON CORPORATION; GENESEE VALLEY
BOARD OF COOPERATIVE EDUCATIONAL
SERVICES; GRAHAM CORPORATION;
GTE OPERATIONS SUPPORT, INCORPORATED;
MARK IV INDUSTRIES, INC.; NEW YORK
STATE DEPARTMENT OF CORRECTIONAL
FACILITIES, ATTICA CORRECTIONAL
FACILITY; NIAGARA MOHAWK POWER
CORPORATION; P.W. MINOR & SON, INC.;
THE SHERWIN WILLIAMS COMPANY;
UNISYS CORPORATION; U.S. CHROME
CORPORATION OF NEW YORK; AND
WASTE MANAGEMENT OF NEW YORK, L.L.C.,
Defendants.

AND

STATE OF NEW YORK,
Plaintiff,

v.

CITY OF BATAVIA, NEW YORK;
TOWN OF BATAVIA, NEW YORK;
NL INDUSTRIES, INC.; AGWAY, INC.;
BATAVIA METAL PRODUCTS CORPORATION;
BATAVIA NEWSPAPERS CORPORATION;
D/B/A/ BATAVIA DAILY NEWS;
BYRON ENTERPRISES, INC.;
CHAPIN MANUFACTURING, INC.;
EATON CORPORATION;
GENESEE VALLEY BOARD OF
COOPERATIVE EDUCATIONAL SERVICES;
GRAHAM CORPORATION;
GTE OPERATIONS SUPPORT INCORPORATED;
MARK IV INDUSTRIES, INC.;
NIAGARA MOHAWK POWER CORPORATION;
P.W. MINOR & SON, INC.;

00 CV 0838E(SR)

CIVIL ACTION NO.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

PLAINTIFF

v.

CIVIL ACTION NO.

CITY OF BATAVIA, NEW YORK;
TOWN OF BATAVIA, NEW YORK;
NL INDUSTRIES, INC.; AGWAY, INC.;
BATAVIA METAL PRODUCTS CORPORATION;
BATAVIA NEWSPAPERS CORPORATION
D/B/A BATAVIA DAILY NEWS;
BYRON ENTERPRISES, INC.;
CHAPIN MANUFACTURING, INC;
EATON CORPORATION;
GENESEE VALLEY BOARD OF
COOPERATIVE EDUCATIONAL SERVICES;
GRAHAM CORPORATION;
GTE OPERATIONS SUPPORT INCORPORATED;
MARK IV INDUSTRIES, INC.;
NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES,
ATTICA CORRECTIONAL FACILITY;
NIAGARA MOHAWK POWER CORPORATION;
P.W. MINOR & SON, INC.;
THE SHERWIN WILLIAMS COMPANY;
UNISYS CORPORATION;
U.S. CHROME CORPORATION OF NEW YORK;
AND WASTE MANAGEMENT OF NEW YORK, L.L.C.,

DEFENDANTS.

and

STATE OF NEW YORK,

PLAINTIFF,

v.

CITY OF BATAVIA, NEW YORK;
TOWN OF BATAVIA, NEW YORK;
NL INDUSTRIES, INC.; AGWAY, INC.;
BATAVIA METAL PRODUCTS CORPORATION;

BATAVIA NEWS PAPER CORPORATION
D/B/A BATAVIA DAILY NEWS;
BYRON ENTERPRISES, INC.;
CHAPIN MANUFACTURING, INC.;
EATON CORPORATION;
GENESEE VALLEY BOARD OF
COOPERATIVE EDUCATIONAL SERVICES;
GRAHAM CORPORATION;
GTE OPERATIONS SUPPORT INCORPORATED;
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NIAGARA MOHAWK POWER CORPORATION;
P.W. MINOR & SON, INC.;
THE SHERWIN WILLIAMS COMPANY;
UNISYS CORPORATION;
U.S. CHROME CORPORATION OF NEW YORK;
AND WASTE MANAGEMENT OF NEW YORK, L.L.C.,

DEFENDANTS.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary of the United States Department of the Interior ("DOI") filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and the State of New York ("State") also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

B. The United States in the complaint seeks, inter alia: (1) reimbursement of certain costs incurred by EPA and the Department of Justice for response actions at the Batavia Landfill Superfund Site ("Site") in Batavia, New York, together with accrued interest; (2) performance of certain studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) recovery for Natural Resource Damages related to the Site.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design ("Remedial Design") in 1995 and the remedial action ("Remedial Action") for the Site in 1998. EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior on March 22, 1999, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint,

nor do they knowle that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agency does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants. This Consent Decree is not admissible as evidence of liability against any Settling Defendant in this action or any other action.

F. The Batavia Landfill, located in Genesee County, New York, is owned and was operated by the Town of Batavia ("Town"). During the period 1968 through 1980, the City of Batavia entered into various agreements with the Town with respect to, inter alia, the operation and operating costs of the Batavia Landfill. Municipal solid waste and industrial waste were disposed of at the Landfill during the period of its operation.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, NL Industries, Inc. ("NL") and EPA entered into an Administrative Order on Consent on August 9, 1984 to perform a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP.

I. On July 31, 1990, EPA entered into an Administrative Order on Consent with six potentially responsible parties ("PRPs") to conduct a removal of surface and buried drums from the Site. Approximately 632 drums were removed from the Site and disposed of off-site.

J. On March 31, 1993, a Record of Decision (the "1993 ROD") for Operable Unit II ("OU II") selecting an interim remedy was signed by the Regional Administrator of EPA. The OU II remedy extended the local municipal water-supply line to residences affected by contamination from the Site. On September 21, 1993, EPA issued a Unilateral Order to a small group of PRPs to implement

K. NL completed a Remedial Investigation ("RI") Report in August 1993, and NL completed a Feasibility Study ("FS") Report in September 1994.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for Remedial Action on August 8, 1994, in a major local news paper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for Remedial Action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

M. The decision by EPA on the Remedial Action to be implemented for Operable Unit I ("OU I") at the Site is embodied in a ROD executed on June 6, 1995, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. On September 20, 1999, EPA issued an explanation of significant differences ("ESD") that was published in a major local newspaper of general circulation to inform the public of a modification in the Remedial Action selected in the ROD. The ROD, the ESD, and a responsiveness summary to the public comments are part of the administrative record for the Site. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

N. On September 29, 1995, EPA entered into a Remedial Design Administrative Order on Consent ("RDACO") with Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc. and Unisys Corporation to perform the Remedial Design for the Remedial Action selected for the Site. On December 5, 1995, the RDACO was amended to add the City of Batavia and the Town of Batavia as Respondents. The contractor selected by the Respondents performed the Remedial Design, and in April 2000 submitted the Final Design Report.

O. In 1996, EPA invited the PRPs for the Site to participate in a Superfund Cost Allocation Pilot ("Pilot"). On May 5, 1997, neutral allocators entered into a contract with EPA to perform an

allocation at the Site. The purpose of the Pilot was to develop, for settlement purposes only, an allocation of shares of responsibility among all the allocation parties for response costs related to the Pilot, the Remedial Design, the Remedial Action and Operation and Maintenance. As a component of the Pilot, EPA expressed its intent to finance the shares of parties who were insolvent or defunct (the "orphan share") and the shares of parties who refuse to settle, subject to budgetary and legal constraints. The parties who are orphans and recalcitrants or nonsettlers are listed in Appendix G of this Consent Decree.

P. On September 30, 1998, the allocators issued a Final Allocation Report for the Pilot that stated the respective shares of responsibility for all the allocation parties, including the owner/operators, the generators and the transporters of hazardous substances to the Site. The Final Allocation Report, which is a confidential document and is not attached to this Consent Decree, has been accepted by EPA and NYSDEC for settlement purposes only.

Q. In August 1999, EPA informed the Town of Batavia and the City of Batavia of the percentage of their jointly allocated share under the Final Allocation Report that EPA would finance in a settlement for the Pilot in light of EPA's final policy for municipal settlements at co-disposal sites. 63 Fed. Reg. 8197 (Feb. 18, 1998).

R. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly performed by the Town of Batavia, the City of Batavia and NL Industries, Inc. ("Settling Work Defendants"), if the Work is conducted in accordance with the requirements of this Consent Decree and its appendices.

S. The Town of Batavia and the City of Batavia have entered into an Intermunicipal Agreement to set forth the terms under which they will seek financial assistance from the State of New York under Title 3 of the Environmental Quality Bond Act of 1986 ("EQBA") for the remedial construction. The Town will enter into a State Assistance Contract with the State of New York that provides, inter alia, that the Town follow required procedures related to the procurement of consulting services, bidding and procurement of contractor services, record keeping and payments for the remedial

T. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD for OU I and the Work to be performed by the Settling Work Defendants shall constitute a response action taken or ordered by the President.

U. The Regional Administrator of EPA Region II has made the following determinations concerning the de minimis Settling Defendants ("De Minimis Settling Defendants") listed in Appendix F of this Consent Decree:

1. prompt settlement with the De Minimis Settling Defendants is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

2. the payment that each De Minimis Settling Defendant is required to make under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is approximately \$25 million; and

3. the amount of hazardous substances contributed to the Site by each De Minimis Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). After considering the statutory criteria for de minimis treatment, EPA determined that the amount of hazardous substances contributed to the Site by each De Minimis Settling Defendant does not exceed 1% of the hazardous substances at the Site and the hazardous substances contributed by each De Minimis Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. EPA's determination is consistent with the Final Allocation Report.

V. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith as part of a global settlement involving execution of settlement documents among the Settling Defendants contemporaneously with this Consent Decree. They also recognize that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Work Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Work Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Work Defendants or their contractors shall provide written notice of

the Consent Decree to subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Work Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work required herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Work Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"De Minimis Settling Defendants" shall mean those Settling Defendants whom EPA has determined qualify for de minimis status under Section 122(g)(1)(a) of CERCLA, 42 U.S.C. § 9622(g)(1)(a), and who are listed in Appendix F of this Consent Decree.

"DOI" shall mean the United States Department of the Interior and any successor departments or agencies of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Federal Natural Resource Trustees" shall mean the federal agencies designated pursuant to

CERCLA and the NC is trustees for natural resources, potentially injured, destroyed or lost as a result of releases at or from the Site, specifically, the U.S. Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce ("NOAA").

"Final Allocation Report" shall mean the report allocating shares of responsibility to all the allocation parties for the Site issued by neutral allocators on September 30, 1998, for the purpose of facilitating a settlement for the costs related to the Pilot.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time, any monies paid to secure access and/or to secure or implement institutional controls, and the amount of just compensation), XV. Future Response Costs shall also include all Interim Response Costs, but shall not include costs incurred by the United States under Paragraph 95 of Section XXII of this Consent Decree.

"Hazardous Substance Superfund" or "Superfund" shall mean the fund established by Section 9507 of Title 26 of the Internal Revenue Code of 1986.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between the date of lodging of this Consent Decree and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal Solid Waste" shall mean household waste and solid waste collected from non-

residential sites th essentially the same as household wa While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource Damages" shall mean damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site.

"Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work.

"Owner Settling Defendant" shall mean the Town of Batavia.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State and the Settling Defendants.

"Past Pilot Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site during the period from September 29, 1995, through the date of lodging of this Consent Decree, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through the date of lodging.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD for OU I as modified by the ESD, in the EPA-approved Remedial Design, and in the Wetlands Work set forth in the Statement of Work..

"Pilot" shall mean that process whereby an allocation for the Site was performed by neutral allocators, as well as the agreements and requirements of the Pilot that were developed by the

Cooperating parties for settlement purposes. The purpose of the Pilot was to develop, for settlement purposes only, an allocation of shares of responsibility among all the allocation parties for response costs related to the Pilot, including the costs of the allocation, the Remedial Design, the Remedial Action and Operation and Maintenance.

"Plaintiffs" shall mean the United States and the State of New York.

"Pre-Pilot Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site prior to September 29, 1995, and any Interest on such costs that has accrued and will accrue in the future pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU I at the Site signed on June 6, 1995, by the Regional Administrator, EPA Region II, and all attachments thereto, and the explanation of significant differences ("ESD"), issued by EPA on September 20, 1999, that modifies the ROD. The ROD and the ESD are attached hereto as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Work Defendants to implement the ROD, in accordance with the SOW, the final Remedial Design, the Remedial Action Work Plans and any other plans approved by EPA. For purposes of this Consent Decree, the Remedial Action shall include the Wetlands Work set forth in the final Remedial Design and the Statement of Work.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean the components of the final design submittal, including the Final Design Report and all components of the Remedial Design, that were prepared and undertaken by the Respondents in accordance with an EPA Administrative Order on Consent, Index No. II-CERCLA-95-0212, to develop the final plans and specifications for the Remedial Action, including, but not limited to, the Wetlands Work set forth in the final Remedial Design and the Statement of Work.

"Remedial Design Administrative Order on Consent" or "RDACO" shall mean the administrative order, Index No. II-CERCLA-95-0212, that EPA entered into on September 29, 1995, with Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc.

and Unisys Corporation (collectively "Respondents") performed the Remedial Design for the Remedial Action selected for the Site, as amended on December 5, 1995, to include the City of Batavia and the Town of Batavia.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Cash-Out Defendants" shall mean those Parties identified in Section 2 of Appendix E of this Consent Decree.

"Settling Defendants" shall mean the Settling Cash-Out Defendants, the Settling Work Defendants, and the De Minimis Settling Defendants.

"Settling Federal Agency" shall mean the Veterans Administration, an agency of the United States, which is resolving any claims which have been or could be asserted against it with regard to this Site as provided in this Consent Decree.

"Settling Work Defendants" shall mean the Town of Batavia, the City of Batavia, and NL Industries, Inc., who shall perform the Remedial Action and Operation and Maintenance of the remedy.

"Site" shall mean the Batavia Landfill Superfund Site, encompassing approximately thirty-five (35) acres, located three miles west-northwest of the City of Batavia, Genesee County, New York and depicted generally on the map attached hereto as Appendix C. The Site includes the areal extent of the contamination emanating from the Landfill, including, but not limited to, any contamination impacting the surrounding wetlands.

"State" shall mean the State of New York including all of its departments, agencies and instrumentalities.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor," also known as the "Engineer" in accordance with the State's Title 3 contracting requirements, shall mean the principal contractor retained by the Settling Work Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any Federal Natural Resources Trustees, including DOI and NOAA.

"Waste material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Wetlands Work" shall mean the creation and maintenance of wetlands as set forth in the final Remedial Design and the Statement of Work.

"Work" shall mean all activities Settling Work Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The mutual objectives of the Parties in entering into this Consent Decree are:

a. to protect public health or welfare or the environment at the Site by the implementation of response actions at the Site by the Settling Work Defendants, to reimburse response costs of the United States, to restore, rehabilitate, replace and/or acquire the equivalent of wetlands adversely affected by releases of hazardous substances at the Site, and to resolve claims of Plaintiffs against Settling Defendants, and the claims of the Settling Defendants which have been or could have been asserted against the United States and the State and each other with regard to the Site, as provided in this Consent Decree.

b. to reach a settlement with De Minimis Settling Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows them to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for other response costs incurred and to be incurred in connection with the Site, thereby reducing litigation relating to the Site;

c. to provide for full and complete contribution protection for Settling Defendants and

Settling Federal Agency with regard to matters addressed by this Consent Decree pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Defendants and Settling Federal Agency

a. Settling Work Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD as modified by the ESD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Work Defendants and approved by EPA pursuant to this Consent Decree. The various groups of Settling Defendants and the Settling Federal Agency shall also make their individual respective payments required under Section XVI of this Consent Decree.

b. The obligations of Settling Work Defendants to finance and perform the Work under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Work Defendants to implement the requirements of this Consent Decree, the remaining Settling Work Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Settling Work Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Settling Work Defendants shall also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal

extent of contamination, or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a Federal or State permit or approval, Settling Work Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Work Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

9. Notice to Successors-in-Title

a. With respect to any property owned or controlled by the Owner Settling Defendant that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval, with a copy to DOI (to the extent the property is to be used in Wetlands Work), a notice to be filed with the Registry of Deeds or other appropriate office, Genesee County, State of New York, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on June 6, 1995, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record the notice within 10 days of EPA's approval of the notice. The Owner Settling Defendant shall provide EPA and DOI (insofar as concerns Wetlands Work) with a certified copy of the recorded notice within 10 days of recording such notice.

b. At least 30 days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX

(Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to EPA, DOI (to the extent the property is to be used in Wetlands Work) and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Work Defendants pursuant to Sections VI (Performance of the Work by Settling Work Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Work Defendants' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Settling Work Defendants, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York,

including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law. Within 10 days after the lodging of this Consent Decree, Settling Work Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Work Defendants propose to change a Supervising Contractor, Settling Work Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Work Defendants in writing. Settling Work Defendants shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Work Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Work Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Work Defendants may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. The Remedial Design was performed by Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc., Unisys Corporation, the City of Batavia and the Town of Batavia pursuant to their Remedial Design Administrative Order on Consent ("RDACO") with EPA, Index Number II-CERCLA 95-0212.

b. Upon approval, approval with conditions, or modification by EPA, as provided in the RDACO, of all components of the final design submittal, the Final Design Report and all components of the Remedial Design shall be deemed incorporated into and shall be enforceable under this Consent

12. Remedial Action.

a. Within 45 days after EPA's approval of the Final Design Report, or 45 days after lodging of the Consent Decree, whichever is later, Settling Work Defendants shall award a contract for the construction of the Remedial Action.

b. Within 30 days of the award of the contract for construction of the Remedial Action, Settling Work Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD as modified by the ESD, achievement of the Performance Standards, and performance of Wetlands Work, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Final Design Report approved by EPA. The Remedial Action Work Plan shall include a detailed description of construction activities, system operations, performance monitoring, Wetlands Work, and an overall management strategy for the Remedial Action. It shall also include a description of the technical approach for performing construction activities in accordance with the approved Final Design Report and the ROD as modified by the ESD. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Work Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. The Remedial Action Work Plan shall include, but not be limited to, the following elements: (1) the final schedule or schedules for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) the Site Management Plan ("SMP") for Remedial Action activities; (5) methodology for updating and implementing the Construction Quality Assurance Project Plan

("CQAPP") it is included with the approved Final Design Report; (6) a Permit Plan and permit schedule for satisfying permitting requirements; (7) methodology for implementation of the Health and Safety Plan; (8) methodology for implementation of the Operation and Maintenance Plan; (9) tentative formulation of the Remedial Action team, and (10) Wetlands Work. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Work Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

d. Upon approval of the Remedial Action Work Plan by EPA, with concurrence by DOI of those portions of such Plan that concern Wetlands Work, and after a reasonable opportunity for review and comment by the State, Settling Work Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Work Defendants shall submit to EPA, the State and DOI (to the extent the document concerns Wetlands Work) all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Work Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Settling Work Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD as modified by the ESD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

For the purposes of this Paragraph 14 and Paragraphs 50 and 51 only, the "scope of the remedy selected in the ROD" is: (1) excavation of all wastes and contaminated soil from the Northern Area of the Site, and consolidating these materials under the Landfill cap in the Southern Area of the Site; (2) grading of the Northern Area with clean topsoil and seeding with a vegetative cover; (3) excavation of approximately 150 drums of hazardous substances from the Southern Area and off-site treatment and disposal; (4) capping of the Southern Area with a New York State Solid Waste Standard Cap in accordance with the substantive requirements of 6 NYCRR Part 360-2.13(q), or an equivalent design as permitted pursuant to the regulations at 6 NYCRR Part 360-2.13(w); (5) performance of an explosive gas survey to determine the need for constructing a passive gas venting layer or trench system under the cap material; (6) construction of a leachate collection system consistent with the requirements of 6 NYCRR Part 360 to provide a physical barrier to the migration of leachate from the Site; (7) implementation of long-term operation and maintenance of the Landfill cap, including inspections and repairs; (8) groundwater monitoring; and (9) Wetlands Work as provided in the Remedial Design and the SOW.

c. If Settling Work Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 73 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Work Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Work Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve Performance Standards.

16. Settling Work Defendants shall, prior to any off-Site shipment of Waste Material from the

Site to an out-of-state waste management facility, provide written notification to the appropriate State environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Work Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Work Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Work Defendants following the award of the contract for Remedial Action construction. The Settling Work Defendants shall provide the information required by Paragraph 16.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. Settling Work Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment, at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA

and to submit written comments for the record during comment period.

20. Settling Work Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Work Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 89 or Paragraph 90 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Work Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 89 or Paragraph 90 of Section XXII (Covenants by Plaintiffs) are satisfied; (2) EPA's determination that the Remedial Action is not protective of human health and the environment; or (3) EPA's selection of further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 73 (record review).

21. Submissions of Plans. If Settling Work Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Work Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Settling Work Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation" (EPA QA/R5), dated October 1987; "Preparing Perfect Project Plans" (EPA/600/9-89/087), dated October 1989, and subsequent amendments to such guidelines upon notification by EPA to Settling Work Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Work Defendants shall submit to EPA for approval, after a reasonable opportunity for review

and comment by the [redacted], a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and guidance documents, including, but not limited to, the following: "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" (EPA QA/RS, October 1998); "Region II CERCLA Quality Assurance Manual," Revision 1, EPA Region 2, dated October 1989, and any updates thereto, or an alternate EPA-approved test method; quality assurance and chain-of-custody procedures in accordance with standard EPA protocol and guidance, including the "Region II CERCLA Quality Assurance Manual," Revision 1, EPA Region 2, dated October 1989, and any updates thereto; sampling and analyses according to accepted EPA methods as documented in the "Contract Lab Program Statement of Work for Organic Analysis, (OLM04.2)" or the latest revision, and the "Contract Lab Program Statement of Work for Inorganic Analysis, (ILM04.0)" or the latest revision, or other EPA approved methods; and the validation procedures in "EPA Region II Contract Lab Program Organics Data Review and Preliminary Review (SOP #HW-6, Revision 11)," dated June 1996, or the latest revision, and the "Evaluation of Metals Data for the Contract Laboratory Program (SOP #HW-2, Revision 11)," dated January 1992, or the latest revision. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Work Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Work Defendants in implementing this Consent Decree. In addition, Settling Work Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Work Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", and any amendments made thereto during the course of the implementation of this Decree. Settling Work Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Work Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the

23. Upon request, the Settling Work Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Work Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Work Defendants to take split or duplicate samples of any samples it takes as part of EPA's oversight of the Settling Work Defendants' implementation of the Work.

24. Settling Work Defendants shall submit to EPA five copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Work Defendants with respect to the Site and/or the implementation of this Consent Decree within five days of the date when those results or data become available to Settling Work Defendants, unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA, DOI and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, the following activities:

i. Monitoring the Work;

Verify, any data or information submitted to United States:

- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in Paragraph 95 of this Consent Decree;
- vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV (Access to Information);
- viii. Assessing Settling Defendants' compliance with this Consent Decree; and
- ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, not installing or utilizing wells for potable use within the area of groundwater contamination at the Site, not engaging in any construction or other activities that might threaten the integrity of the wetlands created and maintained at the Site, and not engaging in any construction or other activities that might threaten the integrity of the cap after it is installed over the landfill at the Site; and

c. execute and record in the Registry of Deeds, or other appropriate land records office of Genesee County, State of New York, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA or DOI (to the extent the property concerns the Wetlands Work) determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures including, but not limited to, Wetlands Work, to be performed pursuant to this Consent

Decree. Such Settling Defendants shall grant the access and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA and DOI (to the extent such rights concern Wetlands Work): (i) the United States, on behalf of EPA and DOI, and their representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA's or DOI's (to the extent the property concerns Wetlands Work) request therefor, submit to EPA for review and approval with respect to such property, and to DOI for concurrence (to the extent such property concerns Wetlands Work):

i. a draft easement that is enforceable under the laws of New York State, that is approved by EPA, concurred on by DOI (to the extent the easement concerns Wetlands Work), and acceptable under the Attorney General's Title and Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) ("Standards").

Within 15 days of EPA's approval and acceptance of the easement, and concurrence by DOI (to the extent the easement concerns Wetlands Work), such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Registry of Deeds or other appropriate office of Genesee County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA and DOI (to the extent the property concerns the Wetlands Work) with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Work Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Work Defendants, as well as for the United States on behalf of EPA and DOI and for the State, as well as their representatives

(including contractor for the purpose of conducting activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree:

b. an agreement, enforceable by the Settling Work Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 26(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA or DOI (to the extent the property concerns Wetlands Work) so requests, the execution and recording in the Recorder's Office or Registry of Deeds, or other appropriate land records office of Genesee County, State of New York, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA or DOI (to the extent the property concerns Wetlands Work) determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures, including, but not limited to, Wetlands Work, to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA and DOI (to the extent such rights concern Wetlands Work): (i) the United States, on behalf of EPA and/or DOI and their representatives, (ii) the State and its representatives, (iii) the Settling Work Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of the date of a request therefor by EPA or DOI (to the extent the property concerns Wetlands Work), Settling Work Defendants shall submit to EPA for review and approval with respect to such property and to DOI for concurrence (to the extent the property concerns Wetlands Work):

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA, and concurred on by DOI (to the extent the property concerns Wetlands Work)), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA approval and acceptance of the easement and concurrence by DOI (to the extent the easement concerns Wetlands Work), Settling Work Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office Registry of Deeds or other appropriate office of Genesee County. Within 30 days of the recording of the easement, Settling Work Defendants shall provide EPA and DOI (to the extent the property concerns Wetlands Work) with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of EPA's request therefor, Settling Work Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Work Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all direct and indirect costs incurred by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Work Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Work Defendants shall submit to EPA, DOI and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Work Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Work Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Work Defendants shall submit these progress reports to EPA, DOI and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Work Defendants pursuant to Paragraph 51.b. of Section XIV (Certification of Completion). If requested by EPA or DOI, Settling Work Defendants shall also provide briefings for EPA or DOI to discuss the progress of the Work.

32. The Settling Work Defendants shall notify EPA and DOI (to the extent the schedule change affects Wetlands Work) of any change in the schedule described in the monthly progress report for

the performance of an activity, including, but not limited to, the collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Work Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Work Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of an event of the type referred to in the preceding paragraph, Settling Work Defendants shall furnish to EPA a written report, signed by the Settling Work Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Work Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Work Defendants shall submit all plans, reports, and data required by Section VI, above, the SOW, the EPA-approved Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW and such approved plans. Settling Work Defendants shall simultaneously submit copies of all such plans, reports and data to DOI (to the extent such documents concern Wetlands Work) and the State, in accordance with the requirements of Section XXVII, below.

36. All reports and other documents submitted by Settling Work Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Work Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Work Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by DOI and the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Work Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Work Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Work Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Work Defendants shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Work Defendants shall proceed, at the direction of EPA, to take any action required by any non-

deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Work Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Work Defendants to correct the deficiencies, in accordance with the preceding paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Work Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Work Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Work Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Work Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XX, stipulated penalties shall accrue for such violation, as provided in Section XXI, from the date on which the initial submission was originally required.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATOR

43. Within 20 days of lodging this Consent Decree, Settling Work Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Work Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Work Defendants' Project Coordinator shall not be an attorney for any of the Settling Work Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. EPA may designate other representatives, including, but not limited to, EPA, DOI and State employees, and Federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. Settling Work Defendants' Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within 30 days of entry of this Consent Decree, Settling Work Defendants shall establish and maintain financial security in the amount of \$13.8 million in one or more of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Work Defendants;
- (e) A demonstration that one or more of the Settling Work Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

47. If the Settling Work Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling Work Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Work Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Work Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Section. Settling Work Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

48. If Settling Work Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent Decree, Settling Work Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by EPA and the Settling Work Defendants, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be

performed. Settling Work Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Work Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Work Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Work Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action

a. Within 90 days after Settling Work Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants, EPA and DOI. If, after the pre-certification inspection, the Settling Work Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to DOI and the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Work Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware

that the [redacted] sign. [redacted] ant penalties for submitting false [redacted] form [redacted] n, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by DOI and the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice any comments received from DOI concerning Wetlands Work. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, with concurrence by DOI (for the portions of the Remedial Action concerning Wetlands Work), based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Work Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Work Defendants' obligations under this Consent Decree.

51. Completion of the Work

a. Within 90 days after Settling Work Defendants conclude that all phases of the Work (including O & M), have been fully performed. Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants, EPA and DOI (to the extent the inspection concerns Wetlands Work). If, after the pre-certification inspection, the Settling Work Defendants still believe that the Work has been fully performed. Settling Work Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by DOI and the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete the Work. EPA will set forth in the notice any comments received from DOI concerning Wetlands Work. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, with concurrence of DOI (for the portions of the Work concerning

Wetlands Work, has on the initial or any subsequent request Certification of Completion by Settling Work Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree. EPA will so notify the Settling Work Defendants in writing.

XV. EMERGENCY RESPONSE

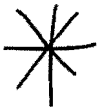
52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Work Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Work Defendants shall notify the Chief of the Removal Action Branch, EPA Region II, at (732) 321-6658. Settling Work Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Work Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Work Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States and the State a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXII (Covenants by Plaintiffs).

54. a.. Within 7 days of receipt by Settling Work Defendants of notice from the United States that this Consent Decree has been lodged with the Court, the Settling Work Defendants shall establish an interest bearing account (the "Escrow Account") in a bank duly chartered in the State of New York. The costs of the escrow and the risk of loss as to any of the principal shall be borne by Settling Work Defendants.

b. Within 30 days of the lodging of the Consent Decree, Settling Cash-Out Defendants and De Minimis Settling Defendants shall remit to the Escrow Account their respective payments due in accordance with their private agreement with Settling Work Defendants, in payment of the United States' Pre-Pilot Response Costs, Past Pilot Response Costs, Future Response Costs, including a premium on Future Response Costs, and Settling Work Defendants' past and future response costs. Settling Cash-Out Defendants and De Minimis Settling Defendants shall send notice to the United States, as specified in Section XXVII (Notices and Submissions), that their payments to the Escrow Account have been made. Settling Work Defendants shall send notice to the United States in the event that they do not receive the required payment from any Settling Cash-Out Defendant or De Minimis Settling Defendant within 30 days of lodging of the Consent Decree. If the Court declines to enter the Consent Decree, the payments made to the Escrow Account shall be returned to Settling Cash-Out Defendants and De Minimis Settling Defendants, together with any interest accrued on their individual payments.

c. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agency, shall remit to the Escrow Account the sum of \$565,226, in payment of its share of the United States' Pre-Pilot Response Costs, Past Pilot Response Costs, Future Response Costs, including a premium on Future Response Costs, and Settling Work Defendants' past and future response costs. Settling Federal Agency shall send notice to the United States, as specified in Section XXVII (Notices and Submissions), that its payment to the Escrow Account has been made.



54.1. Within 30 days of the effective date of this Consent Decree, Settling Work Defendants shall pay to the U.S. Department of the Interior ("DOI") \$51,000 in reimbursement of past DOI costs of assessing Natural Resource Damages and payment for future costs of monitoring Wetlands Work in accordance with the Remedial Design and the SOW under this Consent Decree. Payment to DOI under this Paragraph shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing NRDAR account number 14X5198, as well as the Batavia Landfill Site, DOJ case number 90-11-2-861, and U.S.A.O. number 94V0962 for electronic payments. Payment shall be made in accordance with instructions provided to the Settling Work Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Work Defendants shall simultaneously send notice that such payments have been made to the United States as specified in Section XXVII (Notices and Submissions).

55. In the event that any of the payments required by Paragraphs 54 and 54.1. are not made by the date they are due under this Consent Decree, Interest on the unpaid balance shall be paid by the individual Settling Defendants or Settling Federal Agency who have failed to make such timely payment, with such Interest commencing on the date the payment was due and accruing through the date of the payment.

56. Settling Work Defendants shall reimburse the EPA Hazardous Substance Superfund for 73.66% of the Future Response Costs not inconsistent with the National Contingency Plan. The United States will periodically send Settling Work Defendants billings for such costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Settling Work Defendants shall make all payments within 30 days of the date of each bill requiring payment, except as otherwise provided in Paragraph 57. Settling Work Defendants shall make all payments via electronic funds transfer ("EFT"). Payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as stated in this Paragraph. To make payment via EFT, Settling Work Defendants shall provide the following information to their bank:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank ABA Routing Number: 043000261
- v. Names of Settling Work Defendants
- vi. Case number: 90-11-2-861
- vii. Site/spill identifier: 0222

Along with this information, Settling Work Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Settling Work Defendants' payment is properly recorded, Settling Work Defendants shall send a letter to the United States within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number, and each Settling Work Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVII (Notices and Submissions), and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

57. a. Settling Work Defendants may contest payment of any Future Response Costs under Paragraph 56 if they determine that the United States has made a mathematical error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of the date of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Work Defendants shall within the 30-day period pay all uncontested Future

Response Costs to the United States in the manner described in Paragraph 56. Simultaneously, the Settling Work Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Work Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Work Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Work Defendants shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 56. If the Settling Work Defendants prevail concerning any aspect of the contested costs, the Settling Work Defendants shall pay that portion of the costs for which they did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 56; Settling Work Defendants shall receive a refund of any balance of this escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Work Defendants' obligation to reimburse the United States for its Future Response Costs.

b. In the event that any payment required under Paragraph 56 or 57.a. is not made when due, Settling Work Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of the bill and shall accrue through the date of Settling Work Defendants' payment. Settling Work Defendants shall pay such Interest in accordance with the payment procedures set forth in Paragraph 56, above. Payments of Interest made under this Section shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to make timely payments under this Section.

58. The Parties to this Consent Decree recognize and acknowledge that the payment obligations

of the Settling Federal Agency under this Consent Decree shall be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. CLAIMS AGAINST THE SUPERFUND

59. a. Pursuant to Sections 111(a)(2), 112, and 122(b)(1) of CERCLA, 42 U.S.C. §§ 9611(a)(2), 9612, and 9622(b)(1), the Settling Work Defendants may submit a claim for reimbursement to the Hazardous Substance Superfund (the Fund) for up to 7.26 % of the necessary costs incurred in completing the Remedial Action in accordance with this Consent Decree, the ROD, the Remedial Design and Appendix D (Preauthorization Decision Document). In no event shall Settling Work Defendants' total claim(s) against the Fund under this Section exceed the sum of \$808,446. Reimbursement from the Fund shall be subject to the provisions of Section 112 of CERCLA, the regulations set forth in 40 C.F.R. Part 307, and the applicable claims and audits procedures specified in the Preauthorization Decision Document, attached hereto in Appendix D, and shall be made in accordance with the procedures outlined in Appendix D.

b. Settling Work Defendants' claim(s) against the Fund may cover only those costs incurred during the implementation of the Remedial Action, and may include attorneys' fees only to the extent that such fees are directly necessary for the implementation of the Remedial Action (e.g., attorneys' fees for drawing necessary contract documents), and otherwise meet the requirements of 40 C.F.R. Part 307. Settling Work Defendants shall be solely responsible for all Operation and Maintenance costs, Past Response Costs, and any other type of attorneys' fees (e.g., fees related to evaluating or establishing the liability of Settling Defendants or any person, pursuing a claim against any other person, defending a claim by the United States or any other person, evaluating Settling Defendants' submissions under, or compliance with, the terms of this Consent Decree, or advising or representing Settling Defendants in any action or dispute resolution under this Consent Decree or in any action or proceeding to enforce this Consent Decree), and may not submit a claim against the Fund for these costs.

c. If [redacted] subsequently determined that the preauthorized response actions that comprise the Remedial Action require modification, or if it appears that project costs for the Remedial Action will exceed \$11,135,000, a revised application for preauthorization may be submitted to EPA for up to 26.34% of that portion of the necessary costs incurred by Settling Work Defendants in completing the Remedial Action in accordance with this Consent Decree, the ROD, the Remedial Design, and Appendix D (Preauthorization Decision Document) which exceeds \$11,135,000. In accordance with the requirements of 40 C.F.R. § 307.22(i), a revised application for preauthorization must be approved by EPA before different, or additional, actions are undertaken if such actions are to be eligible for compensation from the Fund.

60. If the Agency denies a claim for reimbursement in whole or in part, it shall notify the Settling Work Defendants in writing of the reason for such denial. Within 30 days after receiving such written notice of EPA's decision, the Settling Work Defendants may request an administrative hearing as provided in Section 112(b)(2) of CERCLA, 42 U.S.C. § 9612(b)(2), and 40 C.F.R. Part 307. If EPA fails to pay Settling Work Defendants' claim within sixty (60) days of receipt of a perfected claim, as defined in 40 C.F.R. Section 307(14), interest shall accrue on the amount due and payable to the Settling Work Defendants.

61. Pursuant to Section 112(c)(1) of CERCLA, 42 U.S.C. § 9612(c)(1), Settling Work Defendants hereby subrogate their rights to the United States to recover from other parties, who are not signatories of this Consent Decree, any costs reimbursed to the Settling Work Defendants under this Section, and Settling Work Defendants and their contractors shall assist in any action to recover these costs that may be initiated by the United States. All of the Settling Work Defendants' contracts for implementing the preauthorization decision document shall include a specific requirement that the contractors agree to provide this cost recovery assistance to the United States. The cost recovery assistance shall include, but not be limited to, furnishing the personnel, services, documents, and materials requested by the United States to assist the United States in documenting the work performed and costs expended by Settling Work Defendants or Settling Work Defendants' contractors at the Site in order to aid in cost recovery efforts. Assistance shall also include providing all requested assistance in the interpretation of evidence and costs, and providing requested

62. The Settling Defendants shall not make any claim against the Fund for any costs incurred pursuant to this Section, with the exception of claims by Settling Work Defendants authorized pursuant to this Section of the Consent Decree.

XVIII. INDEMNIFICATION AND INSURANCE

63. a. Neither the United States nor the State assumes any liability by entering into this agreement or by virtue of any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Work Defendants shall indemnify, save and hold harmless the United States, with the exception of the Settling Federal Agency, the State and their respective officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Work Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Work Defendants agree to reimburse the United States, with the exception of the Settling Federal Agency, for all costs it incurs (including, but not limited to, attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Work Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Settling Work Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Work Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Work Defendants notice of any claim for which the United States or the State plan to seek indemnification pursuant to Paragraph

64. Settling Work Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Defendants and any person for performance of Work at or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Work Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Defendants and any person for performance of Work at or relating to the Site, including, but not limited to, claims on account of construction delays. Nothing in this Section shall be construed to limit the rights of Settling Work Defendants to make claims against the Superfund in accordance with Section XVII of this Consent Decree, or to limit the right of the City of Batavia or the Town of Batavia to seek reimbursement for eligible expenses incurred pursuant to this Consent Decree from the State under EQBA or any subsequent State legislation that may allow for such reimbursement to the City or Town.

65. No later than 15 days before commencing any on-site Work, Settling Work Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of ten million dollars, combined single limit, and automobile liability insurance with limits of five million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Work Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Work Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Work Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Work Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Work Defendants demonstrate

by evidence of fact to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Work Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

66. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether,

in the opinion of the Settling Defendants, such event may cause contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

68. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice under the preceding paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 66 and 67, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

70. a. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree between the Settling Work Defendants and EPA. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Work Defendants that have not been disputed in accordance with this Section.

b. DOI will participate with EPA in resolution of a dispute under this Section only to the extent that the dispute concerns Wetlands Work. All written communications concerning the resolution of such a dispute shall also be served on DOI. EPA's positions and decisions concerning resolution of a dispute concerning Wetlands Work shall be adopted with the written concurrence of DOI.

71. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

72. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Work Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Work Defendants. The Statement of Position shall specify the Settling Work Defendants' position as to whether formal dispute resolution should proceed under Paragraph 73 or Paragraph 74.

b. Within 14 days after receipt of Settling Work Defendants' Statement of Position, EPA

will serve on Settling Work Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 73 or 74. Within 14 days after receipt of EPA's Statement of Position, Settling Work Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Work Defendants as to whether dispute resolution should proceed under Paragraph 73 or 74, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Work Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 73 and 74.

73. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Work Defendants regarding the validity of the ROD's provisions or the appropriateness of the remedy selected in the ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 73.a. This decision shall be binding upon the Settling Work Defendants, subject only to the right to seek judicial review pursuant to Paragraph 73.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 73.b. shall be

reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Work Defendants with the Court and served on the United States within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Work Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Work Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 73.a.

74. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Work Defendants' Statement of Position submitted pursuant to Paragraph 72, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on the Settling Work Defendants unless, within 10 days of receipt of the decision, the Settling Work Defendants file with the Court and serve on the United States a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Work Defendants' motion.

b. Notwithstanding Paragraph T of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

75. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending

resolution of the dispute as provided in Paragraph 8. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Work Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

76. Settling Work Defendants, as provided in Paragraphs 77, 78 and 79 of this Section and Settling Cash-Out Defendants and De Minimis Settling Defendants, as provided in Paragraph 78 of this Section, shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Work Defendants shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

77. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 5,000	15th through 30th day
\$10,000	31st day and beyond

b. i. timely submission and, if necessary, revision and resubmission of the

Remedial Action Work Plan and a submission required under the approved Remedial Action Work Plan;

ii. Implementation of the Remedial Action and O&M in accordance with the ROD, the SOW, and this Consent Decree;

iii. Access and Institutional Control requirements set forth in Section IX, to the extent applicable to Settling Work Defendants;

iv. Emergency response requirements set forth in Section XV;

v. Modifications of the SOW or related work plans pursuant to Paragraph 14, and implementation of the work called for by such modifications in accordance with the modified SOW or work plan; and

vi. Performance of studies and investigations and further response actions pursuant to Section VII.

78. a. Settling Work Defendants shall be liable for the following stipulated penalties which shall accrue per violation per day for any noncompliance with the requirements of Subparagraph b., below. In addition, any Settling Cash-Out Defendants and De Minimis Settling Defendants that do not comply with any requirement of Subparagraphs b. xi. and xii. shall be liable for the following stipulated penalties which shall accrue per violation per day of any such noncompliance with those requirements:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$3,000	31st day and beyond

- b. i. Timely submission and, if necessary, revision and resubmission of the name, title, and qualifications of the proposed Supervising Contractor pursuant to Section VI;
- ii. Timely submission of the name of the Project Coordinator pursuant to Section XII;
- iii. Certification of Completion requirements set forth in Section XIV;
- iv. Timely notification regarding any delay or anticipated delay, consistent with Paragraph 67;
- v. Indemnification and insurance requirements set forth in Section XVIII;
- vi. Quality Assurance, sampling, data analysis, and other requirements set forth in Section VIII;
- vii. Reporting requirements as set forth in Section X;
- viii. Financial Assurance requirements pursuant to Section XIII;
- ix. Timely submission of written notification of any off-site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 16;
- x. Notice requirements as set forth in Paragraph 9;
- xi. Payment requirements pursuant to Section XVI; and
- xii. Submission of documents and other information in

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXII (Covenants by Plaintiffs), Settling Work Defendants shall be liable for a stipulated penalty in the amount of \$500,000.

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Work Defendants of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region II, under Paragraph 73.b. or 74.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Work Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

81. Following EPA's determination that one or more Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give such Settling Defendants written notification of the same and describe the noncompliance. EPA may send such Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

82. All penalties accruing under this Section shall be due and payable to the United States

within 30 days of the date of EPA's demand for payment of the penalties, unless Settling Work Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be made by EFT, consistent with the payment procedures set forth in Paragraph 56 of this Consent Decree.

83. The payment of penalties shall not alter in any way Settling Work Defendants' obligation to complete the performance of the Work required under this Consent Decree.

84. Penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the date of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Work Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below.

c. If the District Court's decision is appealed by any Party, Settling Work Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Work Defendants to the extent that they prevail.

85. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings against such Settling Defendants to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue

of Settling Defendants. Violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

86. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXII. COVENANTS BY PLAINTIFFS

87. a. Settling Cash-Out Defendants and Settling Work Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Cash-Out Defendants and the Settling Work Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, 92 and 92.1 of this Section, the United States covenants not to sue or to take administrative action against the Settling Cash-Out Defendants and the Settling Work Defendants, as well as their predecessors and/or related companies specifically identified in Paragraph 87.b., below, pursuant to Sections 106 and 107(a) of CERCLA, relating to the Site, and the State covenants not to sue or take administrative action against the Settling Cash-Out Defendants and the Settling Work Defendants, as well as their predecessors and/or related companies specifically identified in Paragraph 87.b., below, pursuant to Sections 107(a) and 113 of CERCLA and State law, relating to the Site. This covenant not to sue also extends to the officers, directors and employees of Settling Cash-Out Defendants and Settling Work Defendants, as well as to public officers and elected officials of the Town of Batavia and the City of Batavia, to the extent that their liability arises solely from actions taken in their official capacities as officers, directors, employees, public officers and elected officials of such parties. Subject to Paragraphs 89, 90, 92 and 92.1, these covenants shall take effect as to Settling Cash-Out Defendants, and, except with respect to future liability, as to Settling Work Defendants, upon the receipt of the payments required by Paragraphs 54 and 54.1 of Section XVI (Reimbursement of Response Costs). With respect to future

liability as Settling Work Defendants, these covenants shall take effect upon Certification of Completion by EPA of the Remedial Action, with concurrence by DOI concerning Wetlands Work, pursuant to Paragraph 50.b. of Section XIV (Certification of Completion). These covenants for Settling Cash-Out Defendants are conditioned upon the satisfactory performance by Settling Cash-Out Defendants of their obligations under this Consent Decree, and for Settling Work Defendants upon the satisfactory performance by Settling Work Defendants of their obligations under this Consent Decree. These covenants extend only to the Settling Cash-Out Defendants and Settling Work Defendants and do not extend to any other person.

b. For the purposes of Subparagraph a., above, the predecessors and/or related companies of Graham Corporation are Graham Manufacturing Co., Inc. and Best Machinery; the predecessor and/or related company of GTE Operations Support Incorporated is GTE Products Corporation; and the predecessors and/or related companies of Waste Management of New York, L.L.C. are Waste Management of New Jersey, Inc., Waste Management of New York, Inc., Hoff Brothers and Bestway.

88. Settling Federal Agency. In consideration of the payment that will be made by the Settling Federal Agency under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, 92 and 92.1 of this Section. EPA and the Federal Natural Resource Trustees covenant not to take administrative action against the Settling Federal Agency, pursuant to Sections 106 and 107(a) of CERCLA, and the State covenants not to sue or take administrative action against the Settling Federal Agency, pursuant to Sections 107(a) and 113 of CERCLA or State law, relating to the Site. EPA's, the Federal Natural Resource Trustees' and the State's covenants shall take effect as to the Settling Federal Agency upon the receipt of the payments required by Paragraph 54. c. of Section XVI (Reimbursement of Response Costs). EPA's, the Federal Natural Resource Trustees' and the State's covenants are conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Consent Decree. EPA's, the Federal Natural Resource Trustees' and the State's covenants extend only to the Settling Federal Agency and do not extend to any other person.

89. United States' Pre-certification reservations. Notwithstanding any other provision of this

Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Cash-Out Defendants and Settling Work Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

90. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Cash-Out Defendants and Settling Work Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicates that the Remedial Action is not protective of human health or the environment.

91. For purposes of Paragraph 89, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Final Remedial Design was approved by EPA, and as set forth in the Record of Decision for the Site, the ESD and the administrative record supporting the Record of Decision and the ESD. For purposes of

Paragraph 90. Information and the conditions known to EPA. I include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

92. General reservations of rights for Settling Cash-Out Defendants, Settling Work Defendants and Settling Federal Agency. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 87 and 88. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Cash-Out Defendants and Settling Work Defendants, and EPA, the State, and the Federal Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agency, with respect to all other matters including, but not limited to, the following:

- a. claims based on a failure by Settling Work Defendants, Settling Cash-Out Defendants, or Settling Federal Agency to meet their respective obligations under this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- d. criminal liability;
- e. liability for violations by a party of Federal or State law which occur during or after implementation of the Remedial Action;
- f. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans); and
- g. for Eaton Corporation, GTE Products Corporation, NL Industries, Inc., R.E. Chapin Manufacturing Works, Inc., Unisys Corporation, the City of Batavia and the Town of

liability for the performance of all remaining requirements of EPA's Administrative Order Index No. II-CERCLA-95-0212 relating to the Remedial Design for the Site, issued on September 29, 1995, and amended on December 5, 1995.

92.1.a. United States' Reservations concerning Natural Resource Injury. Notwithstanding any other provision of this Consent Decree, the United States on behalf of its Federal Natural Resource Trustees, reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the Federal Natural Resource Trustees at the date of lodging of this Consent Decree that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of this Consent Decree that indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the Federal Natural Resource Trustees at the date of lodging of the Consent Decree. For purposes of this Subparagraph, the information and the conditions known to the Federal Natural Resource Trustees shall include only that information and those conditions known to them as of the date the Final Remedial Design was approved by EPA, and as set forth in the Record of Decision for the Site, the ESD and the administrative record supporting the Record of Decision and the ESD.

b. State's Reservations concerning Natural Resource Injury. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Federal Agency with respect to liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

93. De Minimis Settling Defendants. In consideration of the payments that will be made by De Minimis Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 94 of this Section (General reservations of rights for De Minimis Settling Defendants) and Paragraph 117 of Section XXVIII (De Minimis Settling Defendants), the United States covenants not to sue or take administrative action against any of the De Minimis Settling

Defendants, as well as their predecessors and/or related companies specifically identified in this Paragraph, pursuant to Sections 106 and 107(a) of CERCLA, relating to the Site.. and the State covenants not to sue or take administrative action against any of the De Minimis Settling Defendants, as well as their predecessors and/or related companies specifically identified in this Paragraph, pursuant to Sections 107(a) or 113 of CERCLA or State law, relating to the Site. This covenant not to sue also extends to the officers, directors and employees of De Minimis Settling Defendants to the extent their liability arises solely from actions taken in their official capacities as officers, directors and employees of such parties. For the purposes of this Paragraph, the related company of Batavia Newspapers Corp. is Batavia Daily News; the predecessor and/or related company of Chapin Manufacturing, Inc. is R.E. Chapin Manufacturing Works, Inc., and the predecessors and/or related companies of Mark IV Industries, Inc. are E.N. Rowell Company, Inc. and Glar-Ban Corporation. With respect to present and future liability, these covenants not to sue shall take effect for each De Minimis Settling Defendant upon receipt of that De Minimis Settling Defendant's payments as required by Section XVI of this Consent Decree. With respect to each De Minimis Settling Defendant, individually, these covenants not to sue are conditioned upon: a) the satisfactory performance by such De Minimis Settling Defendant of all of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by the De Minimis Settling Defendant relating to such De Minimis Settling Defendant's involvement with the Site. These covenants not to sue extend only to De Minimis Settling Defendants and do not extend to any other person.

94. General reservation of rights for De Minimis Settling Defendants . The covenants not to sue by the United States and the State set forth in Paragraph 93 do not pertain to any matters other than those expressly specified in Paragraph 93. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against De Minimis Settling Defendants with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability arising from past, present or future disposal, release, or threat of

re le of Waste Materials outside of the Site

- d. liability for future disposal of Waste Material at the Site; and
- e. with respect to De Minimis Settling Defendants who are signatories to EPA's Administrative Order, Index No. II CERCLA-95-0212, liability for performing the remaining requirements of the Administrative Order.

95. Work Takeover. In the event that EPA determines that Settling Work Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Work Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 73, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Settling Work Defendants shall be jointly and severally liable for all costs incurred by the United States in performing the Work pursuant to this Paragraph.

96. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCY

97. Covenant Not to Sue. Subject to the reservations in Paragraph 99 and except as provided in Section XVII (Claims Against the Superfund), Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States and the State with respect to the Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

Nothing in this paragraph shall be construed to limit the right of the City of Batavia or the Town of Batavia to seek reimbursement from the State for eligible expenditures under EQBA or any subsequent State legislation providing for reimbursement of such costs.

98. Settling Federal Agency hereby agrees not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

99. The Settling Defendants reserve, and this Consent Decree is without prejudice to, (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a Federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Work Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than

CERCLA; and (b) contribution claims against the Settling Federal Agency in the event any claim is asserted by the United States against the Settling Cash-Out Defendants and Settling Work Defendants under the authority of or under Paragraphs 89, 90 and 92. b, 92.c. or 92. g. of Section XXII (Covenants by Plaintiffs), or against the De Minimis Settling Defendants under the authority of or under Paragraph 94. c. - e. of Section XXII, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against such Settling Defendants.

100. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d), except as provided in Section XVII (Claims Against the Superfund) of this Consent Decree.

101. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

a. the materials contributed by such person to the Site constituting Municipal Solid Waste ("MSW") or Municipal Sewage Sludge ("MSS") did not exceed 0.2% of the total volume of waste at the Site; and

b. the materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

102. Settling Defendants and Settling Federal Agencies: not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Pilot, including for contribution, against all persons that are not otherwise covered by Paragraph 101 of this Consent Decree. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant or Settling Federal Agency may have against any person if such person asserts a claim or cause of action relating to the Pilot against such Settling Defendant or Settling Federal Agency. This waiver shall not apply with respect to any defense, claim or cause of action that a Settling Defendant may have (1) against any insurer, or (2) against any person or entity that (a) is not a party to this Consent Decree and (b) has a contractual liability for some or all costs required to be paid by said Settling Defendant pursuant to this Consent Decree. This waiver also shall not preclude any claims authorized by Section XVII of this Consent Decree. Nothing in this paragraph shall be construed to limit the right of the City of Batavia or the Town of Batavia to seek reimbursement from the State for eligible expenditures under EQBA or any subsequent State legislation providing for reimbursement of such costs.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

103. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties) and Paragraph 102 (Waiver of Claims Against All Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties) and Paragraph 102 (Waiver of Claims Against All Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the matters not addressed by this Consent Decree against any person not a Party hereto.

104. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling

Defendants and the Settling Federal Agency are entitled as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) (and, as to the De Minimis Settling Defendants, Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5)) for matters addressed in this Consent Decree. For purposes of the preceding sentence, the "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the State, or any other person with respect to the Site, and claims brought by the United States on behalf of the Federal Natural Resource Trustees for Natural Resource Damages. The "matters addressed" in this settlement do not include those response costs or response actions or claims for Natural Resource Damages as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Defendants, or EPA, the Federal Natural Resource Trustees or the State assert rights against the Settling Federal Agency, coming within the scope of such reservations. Nothing in this paragraph shall be construed to limit the right of the City of Batavia or the Town of Batavia to seek reimbursement from the State for eligible expenditures under EQBA or any subsequent State legislation providing for reimbursement of such costs.

105. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

106. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 20 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 20 days of service or receipt of any Motion for Summary Judgment and within 20 days of receipt of any order from a court setting a case for trial.

107. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any

defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants set forth in Section XXII (Covenants by Plaintiffs).

XXV. ACCESS TO INFORMATION

108. Settling Defendants shall provide to EPA, DOI and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to their activities at the Site, the RDACO or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site or the Work. Settling Work Defendants shall also make available to EPA and DOI, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

109. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the

date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

110. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

111. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b. of Section XIV (Certification of Completion of the Remedial Action), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b. of Section XIV (Certification of Completion of the Remedial Action), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

112. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA or to DOI (to the extent the records or documents concern Wetlands Work). The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Defendants assert such a privilege, they shall provide the United States with the following: (1) the

title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

113. The United States acknowledges that the Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information served pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

114. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVII. NOTICES AND SUBMISSIONS

115. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States - EPA, DOJ and DOI:

3 copies: Chief, New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

Attention: Michael Walters, Superfund Site Remedial Project Manager

1 copy: Project Leader
U.S. Fish and Wildlife Service
New York Field Office
3817 Luker Road
Cortland, New York 13045

Attention: Kathryn Jahn

One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Attention: Beverly Kolenberg, Superfund Site Attorney

Northeast Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton, Massachusetts 02458

Attention: Marcia Gittes

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ # 90-11-2-861

As to the State:

When submitting EPA any written communication required hereunder, Settling Defendants shall simultaneously submit two copies of that communication (unless the given document is a plan or report, in which case five copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
Room 260B
50 Wolf Road
Albany, NY 12233-7010

Attention: George Harris

As to the Settling Work Defendants:

[Name]

Settling Defendants' Project Coordinator

[Address]

As to the Settling Cash-Out Defendants

[Identify a Contact for the entire group]

. XXVIII. DE MINIMIS SETTling DEFENDANTS

116. By signing this Consent Decree, each De Minimis Settling Defendant certifies individually to best of its knowledge and belief, the following:

a. The De Minimis Settling Defendant has conducted a thorough, comprehensive search for documents and information related to the Site;

b. The De Minimis Settling Defendant has made available in connection with the Pilot and any requests for information from EPA, all information in its possession, or in the possession of its officers, directors, employees, contractors, agents or assigns, that relates in any way to the generation, treatment, transportation, storage or disposal of any hazardous substances at or in connection with the Site;

c. With respect to the totality of information provided by or about the De Minimis Settling Defendant to the United States and to the neutral allocator in the Pilot, the De Minimis Settling Defendant neither possesses nor knows of other documents or information that would

suggest:

i. the amount of hazardous substances contributed to the Site by the De Minimis Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the De Minimis Settling Defendant are not minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

ii. the amount of hazardous substances contributed to the Site by the De Minimis Settling Defendant exceeds 1% of the hazardous substances at the Site or that the hazardous substances contributed by the De Minimis Settling Defendant to the Site are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

117. The United States has determined that the De Minimis Settling Defendants identified in Appendix F qualify for de minimis status under Section 122(g)(1)(a) of CERCLA, 42 § 9622(g)(1)(a). Notwithstanding this determination, however, nothing in this Consent Decree constitutes a covenant not to sue or take action against, or otherwise limits or prejudices the ability of the United States or the State to seek or obtain further relief from a De Minimis Settling Defendant, and the covenants not to sue in Paragraph 93 of Section XXII (Covenants by Plaintiffs) of this Consent Decree are null and void as to such De Minimis Settling Defendant, if information not currently known to the United States is discovered which indicates that such De Minimis Settling Defendant contributed greater than 1% of waste containing hazardous substances to the Site, or that the hazardous substances contributed by such De Minimis Settling Defendant to the Site are significantly more toxic or of greater hazardous effect than other hazardous substances at the Site.

XXIX. EFFECTIVE DATE

118. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXX. RETENTION OF JURISDICTION

119. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXXI. APPENDICES

120. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Record of Decision for the Remedial Action ("ROD for OU I") and the Explanation of Significant Differences.

"Appendix B" is the Statement of Work.

"Appendix C" is the map of the Site.

"Appendix D" is the Preauthorization Decision Document ("PDD").

"Appendix E" is the list of the Settling Work Defendants, the Settling Cash-Out Defendants and the Settling Federal Agency.

"Appendix F" is the list of the De Minimis Settling Defendants.

"Appendix G" is the list of orphan and non-settling parties.

XXXII. COMMUNITY RELATIONS

121. Settling Work Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Work Defendants under the Plan. Settling Work Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Work

Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXIII. MODIFICATION

122. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA (with concurrence from DOI to the extent the modification concerns Wetlands Work) and the Settling Work Defendants. All such modifications shall be made in writing.

123. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Work Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA (with concurrence from DOI to the extent the modification concerns Wetlands Work, and after providing the State with a reasonable opportunity to review and comment on the proposed modification) and the Settling Work Defendants.

124. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

125. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of the Consent Decree without further notice.

126. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXV. SIGNATORIES/SERVICE

127. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

128. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

129. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____, 2000.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the

matter of United States v. City of Batavia, et al. relating to the Batavia Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/25/00

Lois J. Schiffer/ma
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

James O. Payne Jr.
JAMES O. PAYNE, JR.
DAVID ROSSKAM
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

DENISE E. O'DONNELL
United States Attorney
Western District of New York

By: Mary K. Roach
MARY K. ROACH
Assistant United States Attorney
138 Delaware Avenue
Buffalo, New York 14202

Steven A. Herman / mlu

STEVEN A. HERMAN

Assistant Administrator for

Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Robert Roberts / mlu

ROBERT ROBERTS

Office of Enforcement

and Compliance Assurance

U.S. Environmental Protection

Agency

Ariel Rios Building

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Will: J. Fox / 8/67/00

JEANNE M. FOX

Regional Administrator, Region II

U.S. Environmental Protection Agency

290 Broadway

New York, NY 10007-1866

Beverly Kolenberg

BEVERLY KOLENBERG

Assistant Regional Counsel

U.S. Environmental Protection Agency

290 Broadway

New York, NY 10007-1866

In State of New York v. City of Batavia, New York action

ELIOT SPITZER
Attorney General of the
State of New York

9/29/00


BY: David A. Munro

DAVID A. MUNRO, ESQ.
Attorney for Plaintiff
New York State Department of Law
The Capitol
Albany, New York 12224
Tel. No. (518) 474-8481

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia Landfill
Superfund Site.

FOR _____ CITY OF BATAVIA, NEW YORK

Date: 9/25/00



George Spinnegan, Council President
City Council of the City of Batavia

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert Knabel
Title: City Manager, City of Batavia
Address: City Hall, 10 W. Main Street, Batavia, NY 14020
Tel. No.: 716-343-8180

THE UNDERSIGNED PARTY entered into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia landfill Superfund Site.

FOR TOWN OF BATAVIA

Date: 9-22-00

June C. Vukman

June C. Vukman
Supervisor
4165 West Main Street Road
Batavia, New York 14020

Agent Authorized to Accept Service on Behalf of Above-signed Party:

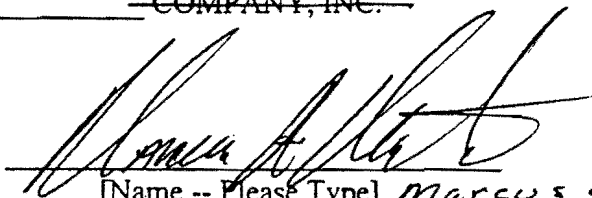
Name:	June C. Vukman
Title:	Supervisor
Address:	4165 West Main Street Road Batavia, New York 14020
Tel. Number:	(716) 343-1729

THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR NL Industries, Inc.
COMPANY, INC.

Date: 9-22-2000



[Name -- Please Type] Marcus A. Martin

[Title -- Please Type] Counsel

[Address -- Please Type] 1630 30th St.

Suite 598
Boulder, CO 80302

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] Marcus A. Martin

Title: Counsel

Address: 1630 30th St., Suite 598

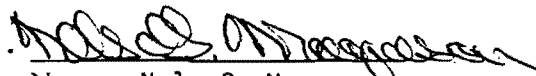
Tel. Number: Boulder, CO 80302

303.442-3950

THE UNDERSIGNED PARTY enters into this consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia
Landfill Superfund Site.

FOR: AGWAY, INC. and AGWAY ENERGY PRODUCTS LLC, successor to
P. O. Box 4933 AGWAY PETROLEUM CORPORATION
Syracuse, New York 13221-4933

Date: 8/14/00


Name Nels G. Magnuson
Title Associate General Counsel

AGENT Authorized to Accept Service on Behalf of the Above-signed Party:

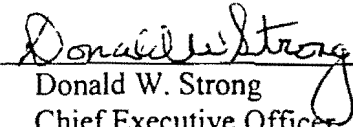
John W. Clarke, Esq.
Harris Beach & Wilcox, LLP
Two World Trade Center, 85th Floor
New York, NY 10048
(212) 687-0100

THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR Batavia Metal Products Corporation

Date: 7-15-00


Donald W. Strong
Chief Executive Officer
20 Liberty Street
Batavia, NY 14020

Agent Authorized to Accept Service on Behalf of Above-signed Party:

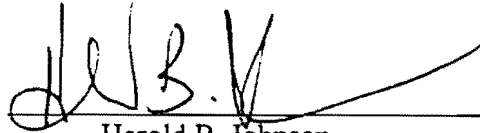
Name: Scott M. Turner, Esq.
Title: Partner
Address: Nixon Peabody LLP
Clinton Square
PO Box 31051
Rochester, NY 14603
Telephone: 716-263-1612

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR: BATAVIA NEWSPAPERS CORPORATION
(d/b/a Batavia Daily News)

Date: _____

9/8/00

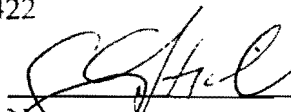
A handwritten signature in black ink, appearing to read 'H.B.J.', is written over a horizontal line.

Harold B. Johnson
Assistant Secretary
Batavia Newspapers Corporation
260 Washington Street
Watertown, NY 13601

THE UNDERSIGNED PARTY enters into this consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia
Landfill Superfund Site.

FOR: BYRON ENTERPRISES, INC.
7275 Batavia-Byron Road
Byron, New York 14422

Date: 8/14/00


Name _____
Title GARY C. STICH,
PRESIDENT

AGENT Authorized to Accept Service on Behalf of the Above-signed Party:

John W. Clarke, Esq.
Harris Beach & Wilcox, LLP
Two World Trade Center, 85th Floor
New York, NY 10048
(212) 687-0100

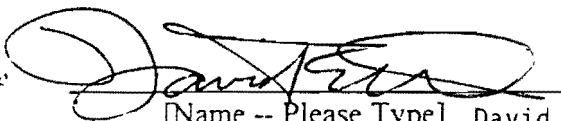
THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

Chapin Manufacturing, Inc.
FOR _____ COMPANY, INC.

Date:

September 7, 2000



[Name -- Please Type] David E. Ward

[Title -- Please Type] President & CEO

[Address -- Please Type] P.O. Box 549, 700 Ellicott
Batavia, NY 14021-0549

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] Gregory C. Condon

Title: _____ Vice President

Address: P.O. Box 549, 700 Ellicott St., Batavia, NY 14021-0549

Tel. Number: 716-343-3140

THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR **Eaton Corporation**

Date: September 21, 2000

E R Franklin

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

Earl R. Franklin
Secretary
1111 Superior Avenue
Cleveland, OH 44114

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James R. Wrathall, Esq.

Title: Partner

Address: Wilmer, Cutler & Pickering, 2445 M St., N.W., Wash., DC 20037

Tel. Number: 202-663-6895

THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR _____ COMPANY, INC.

Genesee Valley Board of Cooperative Educational Services

Date:

8/28/2000

Susan Brown

[Name -- Please Type] Susan Brown

[Title -- Please Type] Clerk of the Board

[Address -- Please Type] Genesee Valley BOCES
80 Munson St.
LeRoy, NY 14482

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] Joseph D. Picciotti

Title: Attorney

Address: Harris Beach & Wilcox, LLP, 130 East Main Street,

Tel. Number: 716-232-4440 Rochester, New York 14604

THE UNDERSIGNED PARTY enters into this Consent Decree in the

matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR GRAHAM CORPORATION

Date: August 18, 2000



Alvaro Cadena
President & Chief Executive Officer
20 Florence Avenue, Batavia, NY 14020

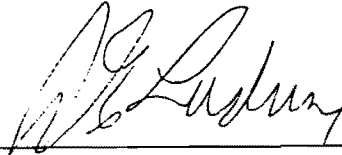
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: William A. Smith, Jr.
Title: Vice President & General Counsel
Address: 20 Florence Avenue, Batavia, NY 14020
Tel. Number: (716)343-2216

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. City of Batavia et al, relating to the Batavia Landfill
Superfund Site.

FOR: GTE OPERATIONS SUPPORT INCORPORATED

Date: August 28, 2000



Alvin E. Ludwig
Vice President – Controller
GTE Operations Support Incorporated
1255 Corporate Drive (SVC04C38)
Irving, Texas 75038

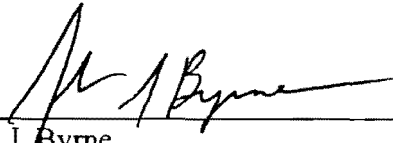
Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name:	<u>Alvin E. Ludwig</u>
Title:	<u>Vice President – Controller</u>
Address:	<u>GTE Operations Support Incorporated</u>
	<u>1255 Corporate Drive (SVC04C38)</u>
	<u>Irving, Texas 75038</u>
Telephone	<u>(972) 507-5320</u>

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR MARK IV INDUSTRIES, INC.

Date: August 30, 2000



John J. Byrne
Vice-President, Chief Financial Officer
One Towne Centre
501 John James Audubon Parkway
P.O. Box 810
Amherst, New York 14226-0810

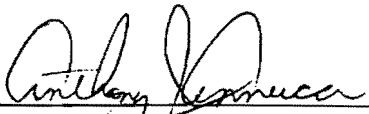
Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Gerald S. Lippes, Esq.
Secretary
700 Guaranty Bldg.
28 Church Street
Buffalo, New York 14202-3950
Telephone: (716) 853-5100

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States*
v. City of Batavia, et al., relating to the Batavia Landfill Superfund Site.

FOR: NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES
ATTICA CORRECTIONAL FACILITY

Date: September 7, 2000



Anthony J. Annucci
Deputy Commissioner
and Counsel

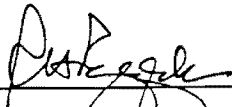
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Anthony J. Annucci
Title: Deputy Commissioner and Counsel
Address: Building #2, 1220 Washington Avenue
Albany, New York 12226-2050
Telephone: 518-457-4951

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR NIAGARA MOHAWK POWER CORPORATION

Date: August 22, 2000



Richard H. Ryczek
Vice President - Environmental Affairs and
Property Management
300 Erie Boulevard West
Syracuse, New York 13202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

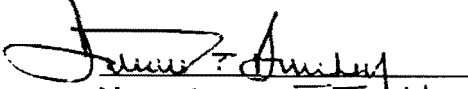
Name: Thomas J. O'Neill, Esq.
Title: Attorney
Address: 300 Erie Boulevard West, Syracuse, NY 13202
Tel. Number: (315) 428-6942

THE UNDERSIGNED PARTY enters into this consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia
Landfill Superfund Site.

FOR: P. W. MINOR & SON, INC.
3 Treadeasy Avenue
P. O. Box 678
Batavia, New York 14021-0678

Date:

6/14/2000


Name Wolfgang T. Hinchey
Title Vice President - Finance

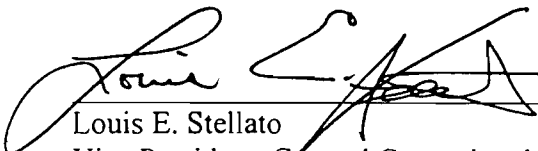
AGENT Authorized to Accept Service on Behalf of the Above-signed Party:

John W. Clarke, Esq.
Harris Beach & Wilcox, LLP
Two World Trade Center, 85th Floor
New York, NY 10048
(212) 687-0100

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR THE SHERWIN-WILLIAMS COMPANY

Date: August 23, 2000



Louis E. Stellato
Vice President, General Counsel and Secretary
101 Prospect Avenue
Cleveland, Ohio 44115

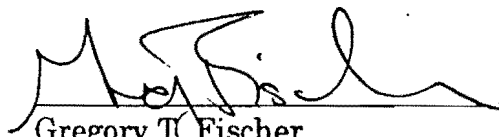
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Allen J. Danzig
Title: Associate General Counsel – Environmental
Address: 101 Prospect Avenue, Cleveland, Ohio 44115
Tel. Number: (216) 566-2482

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR UNISYS CORPORATION

Date: August 14, 2000



Gregory T. Fischer
Vice President, Facilities
and Asset Management

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David T. Noble
Title: Assistant General Counsel
Address: Unisys Way, M.S. E8-106
Blue Bell, PA 19424
Tel. Number: (215) 986-2384

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. City of Batavia et al. relating to the Batavia
Landfill Superfund Site.

U.S. Chrome Corporation of New York
FOR _____ COMPANY, INC.



Robert Z. Reath, President
175 Garfield Avenue
Stratford, Connecticut 06615

Date: 9-7-00

[Name - Please Type]

[Title - Please Type]

[Address - Please Type]

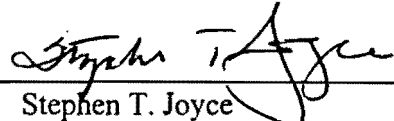
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:	<u>David M. Green</u>
Title:	<u>Vice President of Finance</u>
Address:	<u>175 Garfield Avenue</u>
	<u>Stratford, Connecticut 06615</u>
Tel. No.:	<u>203-378-9622</u>

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Batavia et al. relating to the Batavia Landfill Superfund Site.

FOR Waste Management of New York, LLC

Date: August 25, 2000



Stephen T. Joyce
Area Director-Closed Sites
4 Liberty Lane West
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Waste Management, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002
Attn: V.P. and Assistant General Counsel-Regulatory/HSE

With Copy to:

Name: Stephen T. Joyce
Title: Area Director-Closed Sites
Address: 4 Liberty Lane West
Hampton, NH 03842
Telephone No.: 603-929-3490
Fax No.: 603-929-3152
E-Mail: sjoyce@wm.com

and

Name: Joseph O'Dea, Esq.
Company: Saul, Ewing, Remick & Saul
Address: 3800 Centre Square West
Philadelphia, PA 19102
Telephone No.: 215-972-7109
Fax No.: 215-972-1877
E-Mail: jodea@saul.com